No. 93-85

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

THE WHEELABRATOR CORPORATION,
Petitioner,
v.
KENNETH P. BIDLACK, STANLEY DWORECKI, HELEN MARKER, HOWARD W. SNYDER and ZELMA WESCO, on behalf of themselves and all others similarly situated,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

MOTION FOR LEAVE TO FILE AND BRIEF OF THE AMERICAN AUTOMOBILE MANUFACTURERS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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MOTION FOR LEAVE TO FILE BRIEF FOR THE AMERICAN AUTOMOBILE MANUFACTURERS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

The American Automobile Manufacturers Association (the "AAMA") respectfully moves the Court for leave to file a brief *amicus curiae* in support of the Petitioner, The Wheelabrator Corporation.

This case involves the right of an employer to modify retiree health benefits under the Employee Retirement Income Security Act of 1974 and the National Labor Relations Act, and the right of an employer to rely on the terms embodied in its health care plan documents and collective bargaining agreements to determine its obligations to retirees. The AAMA has an interest in this case because members of the AAMA have extensive experience in designing and administering health care plans for millions of employees. Because of this significant involvement in health plans, the AAMA has a special interest in the legal development of health care administration in general, and in the Seventh Circuit's decision in *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603 (7th Cir. 1993), in particular. The "weak no-vest rule" applied in *Bidlack* in determining whether collectively bargained retiree health benefits have vested will create uncertainty in many instances concerning the duration of such benefits, often resulting in costly litigation, and will deprive employers and unions alike of the flexibility needed to deal with the rising cost of health care. Participation of the AAMA in this petition will assist the Court so that it may have the benefit of the fullest discussion on these and other issues germane to health care administration and design.

Undersigned counsel for the AAMA has obtained consent to the filing of this brief from each of the parties pursuant to Supreme Court Rule 37.2. As of the date of printing, however, written acknowledgement of consent had not been received from Counsel for Respondents. Out of an abundance of caution, the AAMA seeks leave from the Court to file its brief in support of the Petition.

WHEREFORE, the AAMA moves that this Court allow the filing of the "Brief of the American Automobile Manufacturers Association as Amicus Curiae in Support

of the Petition for a Writ of Certiorari," which is submitted herein with the requisite number of printed copies.

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August 16, 1993

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BRIEF OF THE AMERICAN AUTOMOBILE MANUFACTURERS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

INTEREST OF THE AMICUS CURIAE

The American Automobile Manufacturers Association (the "AAMA") is a nonprofit membership association composed of American companies engaged in the manufacture of motor vehicles in the United States. The members of the AAMA are Chrysler Corporation, Ford Motor Company and General Motors Corporation. The activities of the AAMA include research projects, economic studies, collections of historical facts and figures, legal analyses and statistical compilations. Information gained

from these activities is communicated to legislators, government officials, educators, news media and the public. The principal purposes of the AAMA are the promotion of the national goals of individual freedom, mobility and an improved standard of living.

The issues raised in this case involve the right of an employer to modify retiree health benefits under the Employee Retirement Income Security Act of 1974 and the National Labor Relations Act, and the right of an employer to rely on health care plan documents to determine its rights and obligations to retirees. The members of the AAMA have extensive experience in designing and administering health care plans for millions of employees, dependents and retirees. Because of this significant involvement in health plans, the AAMA has a special interest in the legal development of health care administration in general, and in the Seventh Circuit's decision in *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603 (7th Cir. 1993), in particular. The "weak no-vest rule" applied in *Bidlack* in determining whether collectively bargained retiree health benefits have vested will create uncertainty in many instances concerning the duration of such benefits, often resulting in costly litigation, and will deprive employers and unions alike of the flexibility needed to deal with the rising cost of health care. Participation of the AAMA in this petition will assist the Court so that it may have the benefit of the fullest discussion on these and other issues germane to health care administration and design.

SUMMARY OF ARGUMENT

The question of when and under what conditions collectively bargained retiree health insurance benefits become vested, and thus survive the expiration of the agreements creating them, is currently one of the most important issues affecting employers, unions, and retirees. Due to the significance of this issue, it is imperative that the courts develop a uniform rule for determining an

employer's future committment for postretirement medical benefits that provides certainty as to the rights and obligations of each party, while also conforming to the established principles of labor and benefits law.

Unfortunately, the Seventh Circuit's decision in *Bidlack* fails to achieve these objectives. By allowing overly quick resort to extrinsic evidence, the rule adopted by the Seventh Circuit focuses attention away from the language contained in the official plan documents and the collective bargaining agreements creating such benefits. This violates the basic tenets of both the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§ 1001 *et seq.*, and the National Labor Relations Act (the "NLRA"), 29 U.S.C. §§ 151 *et seq.*, which place primary emphasis on the language embodied in the official plan documents and the collective bargaining agreements. ERISA purposefully rejects mandatory vesting of medical benefits, whether for active or retired employees, and under the NLRA, permissive subjects of collective bargaining (which include retiree health benefits) only survive expiration of a collective bargaining agreement if the employer has expressly obligated itself to continue such benefits. Thus, postretirement medical benefits do not vest unless the plan documents and the collective bargaining agreements, when viewed together, provide for such vesting, and a court should not look outside these documents to extrinsic evidence unless the written documents contain an internal inconsistency concerning vesting.

Retention of the rule adopted by the Seventh Circuit would seriously undermine the predictability of an employer's liability for retiree health obligations. As such, it would increase litigation over such benefits and discourage employers from providing such benefits in the first place. The resulting uncertainty would also deprive employers and unions of the flexibility they need to deal with the rising cost of health care in a manner that maximizes the benefits and minimizes the costs for both active

employees and retirees. Therefore, because of the need to develop a uniform rule that provides certainty to employers, unions, and retirees concerning an employer's ability to modify or terminate collectively bargained retiree health benefits following expiration of the collective bargaining agreement, the Court should grant the petition for a writ of certiorari in this case.

REASONS FOR GRANTING THE WRIT

I. IT IS IMPORTANT FOR THE COURT TO DEVELOP A UNIFORM RULE WHICH REDUCES THE UNCERTAINTY ASSOCIATED WITH THIS CRITICAL ISSUE.

The question of if and when collectively bargained retiree health insurance benefits vest, and thus whether such benefits continue beyond the expiration of the collective bargaining agreement under which they were initially provided, is currently one of the most important issues in the field of labor relations. This issue has become especially important over the past decade as the costs of health care have skyrocketed upward. Because union employees make up a large segment of the nation's industrial workforce, and because increasingly large numbers of American workers are expected to enter into retirement in the years ahead, resolution of this difficult and complex issue will have an increasingly significant impact upon our nation's economy.

As a result of the tremendous impact any resolution of this issue will have upon employers, unions, and both active and retired employees, it is important that the courts fashion a uniform rule for resolving this issue that is fair and equitable to employers, unions, and retirees and that provides certainty as to the rights and obligations of each party, thereby precluding the need for costly litigation, while also comporting with the long-standing principles of labor and benefits law. Unfortunately, the courts have been unable to develop a uniform rule which achieves each of these objectives. The decision of the

Seventh Circuit is indicative of the confusion and uncertainty experienced by the courts in addressing this issue. If the writ is not granted, this confusion and uncertainty will continue, to the detriment of employers, employees, and unions alike.

II. THE RULE ADOPTED BY THE SEVENTH CIRCUIT IGNORES THE PRINCIPLES OF ERISA AND THE NLRA, CREATES UNCERTAINTY, AND WILL LEAD TO INCREASED LITIGATION CONCERNING AN EMPLOYER'S POSTRETIREMENT MEDICAL OBLIGATIONS.

A. The Rule Adopted By the Seventh Circuit Permits Quick Resort to Extrinsic Evidence.

The Seventh Circuit was unable to reach a majority view concerning the rule to be applied by a court in determining whether collectively bargained retiree health benefits have vested. The lead opinion decided upon a rule (termed the "weak no-vest rule" by the concurring opinion) which holds that if a collective bargaining agreement is ambiguous with respect to vesting, resort to extrinsic evidence is proper to determine the intent of the parties. However, if such extrinsic evidence fails to show by a preponderance of the evidence that the parties intended the benefits to vest, the presumption is that they did not.

Having settled on this rule, the lead opinion then proceeded to analyze the relevant language contained in the collective bargaining agreements at issue. After identifying what it perceived to be the relevant provisions, the lead opinion characterized them as providing "that once retired employees reach the age of 65 the company will pick up the full tab for their health insurance and that when they die their spouses will continue to receive supplemental health benefits, again at the company's cost." *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 608 (7th Cir. 1993). Declaring that "[t]his could be thought a promise to retired employees that they and their spouses will be covered for the rest of their lives," the lead opin-

ion labeled the agreements as "vague" and therefore determined that resort to extrinsic evidence was proper. *Id.*

This quick resort to extrinsic evidence foreshadows the uncertainty likely to be created by the Seventh Circuit's decision and the onslaught of litigation that is likely to follow in its wake. Essentially, the rule adopted by the Seventh Circuit allows a tribunal to pick out one or two sentences from a typically complex and lengthy labor agreement or plan document, hypothesize that these sentences are potentially subject to more than one interpretation, and immediately entertain an examination of extrinsic evidence to determine the supposed intent of the parties. Such an analysis does not do justice to the powerful bodies of law which have developed under ERISA and the NLRA, and ignores the context in which such agreements are drafted.

B. ERISA Does Not Require the Vesting of Welfare Benefits.

Both the statutory language and case law interpreting ERISA make clear that, in contrast to the rules for pension benefits, ERISA does not require the vesting of welfare benefits. 29 U.S.C. §§ 1051, 1081(a). *See also Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 91 (1983); *Metropolitan Life Insurance Co. v. Massachusetts*, 471 U.S. 724, 732 (1985). The reason Congress rejected automatic vesting of welfare benefits is that it realized the need of employers paying these benefits to have flexibility in modifying them, and because the costs of such plans are subject to fluctuating and unpredictable variables. *Moore v. Metropolitan Life Insurance Co.*, 856 F.2d 488, 492 (2nd Cir. 1988).

ERISA allows the *parties* to a welfare benefit plan to provide in the plan document that such benefits are subject to vesting requirements. *See Ryan v. Chromalloy*, 877 F.2d 598 (7th Cir. 1989). But absent such agreement by the parties, the *statutory* default rule under

ERISA remains that health and welfare benefits do not vest upon an employee's retirement.

C. As Permissive Subjects of Bargaining, Retiree Health Benefits Do Not Survive the Expiration of a Collective Bargaining Agreement Under the NLRA.

Under precedents of the NLRA, each provision of a collective bargaining agreement expires with the expiration of the agreement. *Litton Financial Printing Division v. NLRB*, —— U.S. ——, ——, 111 S. Ct. 2215, 2226 (1991). Nonetheless, certain terms and conditions of employment in existence prior to the agreement's expiration continue in effect after its expiration in order to maintain the *status quo* pending a bargaining impasse or resolution. *See generally, id.* at ——, 111 S. Ct. at 2225-26; *NLRB v. Katz*, 369 U.S. 736, 743-47 (1962). These specific terms and conditions of employment that continue are the "mandatory" subjects of bargaining that were embodied in the expired agreement. Such terms and conditions continue by *operation of law* (*i.e.*, the NLRA) and *not* by contract. These terms and conditions are imposed under the NLRA; but such terms and conditions are not in the nature of contract rights. *See Litton Financial Printing Division*, —— U.S. at ——, 111 S. Ct. at 2225-26.

In contrast to the mandatory subjects of bargaining, the "permissive" subjects of bargaining that were embodied in the expired agreement do not continue. Permissive subjects of bargaining may be changed unilaterally by the employer. *See generally Allied Chemical & Alkali Workers of America, Local Union No. 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 183-88 (1971); *Admiral Retread Equipment Co.*, NLRB Gen. Counsel Advice Mem., Case No. 8-CA-16577, 114 LRRM 1277 (1983). Retiree benefits are considered a permissive subject of bargaining. *Pittsburgh Plate Glass Co.*, 404 U.S. at 176-82. Thus, under the NLRA, an employer may unilaterally change retiree benefits upon the expiration of a collective

bargaining agreement, absent a contrary obligation created by contract. It is left to determine whether the employer has contractually obligated itself in the agreement to not unilaterally alter such benefits following expiration of the agreement.

D. In Order to Establish an Ambiguity, Plaintiffs Should Be Required to Show That the Plan Documents and the Collective Bargaining Agreement Contain Inconsistent Provisions.

The primary focus under both ERISA and the NLRA is on the terms contained in written documents—under ERISA, it is the official plan documents, and under the NLRA, it is the terms embodied in the collective bargaining agreement. The rationale for this shared emphasis on written documents is the need to create certainty among all of the parties as to their respective rights and obligations. Recourse to extrinsic evidence is envisioned only as a last resort.

Based on this paramount interest in creating certainty, a more appropriate view is that no ambiguity exists, and therefore no extrinsic evidence is admissible, unless the official plan documents and the collective bargaining agreement, when considered together, contain an internal inconsistency as to whether the parties intended for retiree health benefits to vest for life upon retirement. The Seventh Circuit explicitly recognized that if the documents are silent with regard to the vesting of retiree benefits, resort to extrinsic evidence is improper. *Bidlack,* 993 F.2d at 608 ("If . . . the collective bargaining agreements in this case were completely silent on the duration of health benefits for retired employees, then since . . . nothing in the structure of the agreements required that the duration be perpetual, we would not allow extrinsic evidence to show that those employees have a perpetual entitlement."). This result should not change merely because the collective bargaining agreements contain arguably vague statements as to the duration of retiree welfare

benefits. The statement that "nothing in the structure of the agreement *require*[*s*] that the duration be perpetual" still applies in such situations, especially if, as in this case, the employer has clearly and unequivocally reserved in the insurance contract that serves as the plan document its right to amend or terminate the benefits provided under the plan. In such cases, the agreement between the employer and the union is clear, and a court has no need to look to extrinsic evidence to determine the parties' bargain. Thus, courts should be reluctant to admit extrinsic evidence unless the plaintiffs can demonstrate an ambiguity based upon the existence of an internal inconsistency in the plan documents and the collective bargaining agreement when viewed in conjunction with each other.

III. THE RULE ADOPTED BY THE SEVENTH CIRCUIT WILL MEAN THAT IN VIRTUALLY EVERY CASE, THE DURATION OF COLLECTIVELY BARGAINED RETIREE WELFARE BENEFITS WILL BE UNCLEAR UNLESS AND UNTIL LITIGATED.

Retention of the rule adopted by the Seventh Circuit will seriously undermine the predictability of an employer's liability for retiree health obligations. Employers will be severely hindered in their ability to amend or modify their retire health obligations in most cases, because an employer can never be totally sure based on an examination of the terms of its plan documents and collective bargaining agreements whether a court will consider provisions in these documents to be "vague" or "ambiguous." Moreover, an employer will be unwilling to risk the introduction of extrinsic evidence to determine the intent of the parties because an employer can never be sure what communications each of its employees may have made to active employees and retirees throughout the term of the collective bargaining agreement. By the same token, the union will be unable to fairly represent its members, because it cannot be sure of the bargain it has struck for active employees and retirees. It cannot bargain to change

a vested benefit. The result will be that neither the employer nor the union can be certain of the employer's obligation for retiree health benefits unless and until the issue has been litigated. Clearly this is an untenable result and not the outcome envisioned by Congress.

The failure to adopt a more definite rule will render uncertain the scope of any provision dealing with a permissive subject of bargaining. In effect, the message to employers will be that whenever they agree to provide retiree benefits (a permissive subject of bargaining), they risk having their agreement "interpreted" well beyond the scope of the limited rights relinquished by the specific language of the agreement. The consequence of such a message likely will be that employers will cease negotiating over retiree benefits. The consequences in turn of a hesitancy to negotiate over retiree benefits is that it will remove some very substantial benefits from the collective bargaining process.[1]

By contrast, what is needed is a more definite rule that respects federal labor law's presumption that the employer retains all rights regarding permissive subjects except those expressly relinquished and that, at the same time, provides some certainty in collective bargaining over such subjects. In our opinion, the rule previously adopted by the Seventh Circuit in *Senn v. United Dominion Industries, Inc.*, 951 F.2d 806, 816 (7th Cir. 1992), *cert. denied*, 61 U.S.L.W. 3851 (June 21, 1993), meets these objectives. The rule adopted in *Senn* essentially states that unless a collective bargaining agreement contains explicit language providing for the vesting of retiree health and welfare benefits, such benefits are deemed to

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[1] Unlike mandatory subjects of bargaining, a union cannot exert economic pressure upon an employer to agree to a permissive subject of bargaining. For example, a union cannot insist to impasse or strike over a permissive subject of bargaining. *See, e.g., National Electrical Contractors Association*, 277 NLRB 397 (1985).

terminate upon expiration of the collective bargaining agreement. The result of such a rule would be that employers will continue to negotiate over permissive subjects like retiree benefits—certainly a desirable objective from the standpoint of national welfare policy.

IV. EMPLOYERS AND UNIONS NEED FLEXIBILITY TO DEAL WITH THE RISING COST OF HEALTH CARE.

Adoption of a more definite rule such as the *Senn* rule would also provide employers currently paying retiree welfare benefits with the flexibility they need to deal with the rapid rise in the cost of health care in a manner beneficial to both active employees and retirees. Collective bargaining between unions and employers has existed for over fifty years. During that time, the collective bargaining process has changed dramatically in response to social and economic developments. These changes are especially pronounced with respect to health and welfare benefits for retirees.

For many years, retiree welfare benefits received little attention in the bargaining process. Employers who chose to pay for such benefits did not encounter a significant drain on their assets, and most retirees that did not receive medical coverage from their former employer could afford to pay for their own health insurance. Often, retiree health care coverage for the term of a collective bargaining agreement was "thrown-in" by the employer as a minor concession in order to finalize the agreement. During the past ten years, however, the cost of health care has risen sharply. Based on 1982-84 dollars, the Consumer Price Index (CPI) for medical care was 162.8 in 1990, compared with 130.7 for all expenditures.[2] National health expenditures as a percentage of gross national product have risen from 4.5% in 1950 to 12.2%

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[2] National Center for Health Statistics, *Health, United States, 1991*, p. 270 (Public Health Service Pub. No. 92-1232).

in 1990,[3] while the gross national product has itself steadily risen over this period. The total employer and other private funds spent on health care rose from $9.2 billion in 1950 to $383.6 billion in 1990, and the per capita amount has increased from $58 in 1950 to $1,478 in 1990.[4] Certainly employers that once agreed to pay for retiree medical care, as well as the unions which negotiated for such promises, never foresaw this tremendous increase in the cost of health care.

Further compounding the problems faced by employers that pay for retiree medical care is the adoption by the Financial Accounting Standards Board of Statement of Financial Accounting Standards No. 106, "Employers' Accounting for Postretirement Benefits Other Than Pensions" ("FAS 106").[5] FAS 106 will have a dramatic and adverse effect on the financial statements of many companies. It is unclear what effect such accounting will have on the bond ratings of such companies by Moody's and Standard & Poor's. However, the result may be that the costs of obtaining credit will go up for companies with significant retiree health obligations under the new rule.

Another factor impacting upon the retiree health obligations of American companies is the emergence of a more global economy. American companies are now facing far greater competition from foreign firms than they did just two or three decades ago, when many of these companies first began bargaining over retiree health

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[3] *Health, United States, 1991*, p. 266.

[4] *Health, United States, 1991*, p. 274.

[5] Previously, most companies followed cash accounting for postretirement welfare benefit obligations, meaning these companies needed only report as an expense their current costs for the period. FAS 106, however, which was issued in December 1990 and is generally effective for fiscal years beginning after December 15, 1992, requires employers to begin following accrual accounting for such liabilities, thereby requiring them to record a liability for such future obligations.

care. Most foreign companies have no liabilities for retiree health care because these amounts are subsidized by their respective governments. This makes it extremely difficult for American companies to manufacture products that are competitively priced with similar goods manufactured by foreign competitors. The ability of American companies to continue to survive and compete against this onslaught of cheap foreign labor is dependent upon the ability of these companies to modify their retiree health obligations in future collective bargaining agreements and to work in conjunction with unions to develop health care packages that provide adequate protection to active employees and retirees without unduly burdening the employers.

Given the tremendous increase in the cost of health care, the requirements of FAS 106 and the threat of foreign competition, American companies must be allowed to redesign health and welfare plans to maximize the benefits and minimize the costs for both active employees and retirees. Tremendous opportunities exist for lowering the health care costs currently experienced under traditional indemnity plans. For example, a company might realize significant cost savings by switching from a simple indemnity program to a comprehensive system of managed health care. Similarly, by hiring their own doctors and building their own medical facilities, companies might also be able to cut health care costs. Finally, by sharing expenses with active employees and retirees through the use of copayments and deductibles, companies could allow free-market forces to play a more effective role in containing increasing health care costs without cutting needed benefits. Because employees and retirees would be undertaking a portion of these costs, they would have a shared incentive to avoid excessive or unnecessary expenditures.

In order to capitalize on such cost-saving opportunities, however, employers and unions must be able to quickly determine the ability of the employer to amend or modify the health benefits currently being paid to existing collectively-bargained retirees. Without a more definite rule by which companies can assess their ability to modify their current benefit structure, they will be locked into the status quo unless they are willing to risk the threat that a costly lawsuit will accompany any such modifications. If companies and unions have no flexibility with regard to existing retirees, they will be forced to diminish health care costs (or other wages and benefits) for existing employees (and future retirees). In effect, this will mean a windfall for the current generation of retirees at the expense of future generations of retirees. Every company has a limited number of dollars that it can pay for health care for its employees, both former and active. More benefits for current retirees means less benefits for active employees, both now and after they retire. Thus, if employers and unions are not permitted to modify the benefits for existing retirees, it will lead to even greater reductions in the benefits for active employees.

A more definite rule that retiree health benefits provided under a collective bargaining agreement cease automatically upon expiration of the agreement unless the employer has expressly obligated itself to pay such benefits for the lifetimes of its retirees, would avoid these problems, because unless the employer has contractually obligated itself to continue providing health and welfare benefits, the employer would know that its obligation to provide such benefits to retirees ceases upon the expiration of the collective bargaining agreement. The employer and union could then bargain on a new package of retiree welfare benefits, at which point they could take into account changes in the marketplace which have occurred since reaching their last agreement. Thus, under

a more definite rule, once the parties reach an agreement, they will both know exactly what they have agreed upon, and they will know that their agreement is for a definitive term. The employer will have some idea of the extent of its future obligations, and the union will be able to inform its members with certainty as to the extent of their benefits.

If, however, the rule adopted by the Seventh Circuit is retained, then employers and unions will be deprived of the necessary flexibility to bargain comprehensively with regard to maintaining a decent health and welfare benefits program for the existing workforce, while continuing to provide sufficient benefits to retirees, and at the same time keeping the costs faced by the employer for such benefits at a manageable level. Instead, employers will be locked into continuing to provide benefits to current retirees that are based on outdated assumptions and market conditions. In some instances, these obligations can represent a significant portion of a company's available working capital. For instance, in many of the rust belt industries, the ratio of retirees to current employees is as high as three to one. Vesting welfare benefits for the lifetimes of all these retirees would saddle these companies with a massive burden. This could result in a loss of jobs for current workers and, in a worst case scenario, could even force a company out of business. Courts should not impose such a liability on a company unless the company has clearly expressed an intent to continue to provide such benefits following expiration of the collective bargaining agreement.

Moreover, if the rule adopted by the Seventh Circuit is retained, unions will not work with employers to develop innovative ways of balancing the needs of current employees and retirees, because they will have a disincentive to bargain the issue in light of the leverage provided them by the employers' fear of litigation if the benefits

currently being provided are modified. Additionally, given the uncertainty over whether a court would deem these benefits vested for life, unions may be concerned as to their authority to bargain with respect to such benefits. Employers will thus be forced to provide for ever diminishing benefits for their active employees, or else diminish their cash compensation. Employers cannot just pass these increased costs on to their consumers because, among other reasons, foreign competitors are not burdened by such costs, and because employers without union employees would not face such difficulties in amending or modifying retiree welfare benefits. For these reasons, the Court should grant the writ and establish a uniform rule that provides certainty concerning the vesting of collectively bargained retiree health and welfare benefits.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari in the instant case so that a uniform rule can be developed that provides certainty to employers, unions, and retirees concerning the employer's ability to modify or terminate collectively bargained retiree health benefits following expiration of the collective bargaining agreement.

Respectfully submitted,

Of Counsel:
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